

EXHIBIT 4

APRIL 12, 1968 AGREEMENT

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AGREEMENT

THIS AGREEMENT, entered into this 12th day of April, 1968 between the City of Cincinnati, Ohio, a municipal corporation, (hereinafter referred to as CITY) and the Board of County Commissioners of Hamilton County, Ohio (hereinafter referred to as COUNTY).

WITNESSETH:

WHEREAS, the Board of County Commissioners of Hamilton County has, since 1924, established sewer districts in accordance with Chapter 6117 of the Ohio Revised Code and earlier comparable statutory provisions of the Ohio Code, and constructed and otherwise acquired sanitary trunk sewers throughout the county, and, as a result, this date owns, operates, and maintains a system of sanitary trunk sewers; and

WHEREAS, the Board of County Commissioners did, on February 1, 1955 consolidate all the previously established sewer districts into a single county sewer district known as "Hamilton County Sewer District No. 1"; and

WHEREAS, the Board of County Commissioners did, on December 4, 1963 complete the consolidation of previously established sewer districts and expand the boundaries of Hamilton County Sewer District No. 1 to include all other unincorporated areas of the county; and

WHEREAS, the City of Cincinnati has, by Ordinance No. Ord. 1968-117 adopted April 10, 1968, consented to be a part of Hamilton County Sewer District No. 1 pursuant to Section 6117.03 of the Ohio Revised Code, and granted to the county the sole and exclusive use of all sanitary sewers and sewage disposal facilities of the City as a part of the county sewer system; and by the same ordinance did also authorize the Board of County Commissioners to proceed with the construction and the maintenance, repair, and operation of any sewer improvement for local service within the City of Cincinnati, pursuant to Section 6117.04, ORC; and

WHEREAS, the Board of County Commissioners of Hamilton County, Ohio did, on April 10, 1968, adopt a resolution in which the City of Cincinnati, Ohio was accepted into Hamilton County Sewer District No. 1, and in which the Board accepted the authorization for the construction, maintenance, repair, and operation of any sewer improvement for local service within the City of Cincinnati, Ohio, pursuant to Section 6117.04, ORC; and

WHEREAS, the City of Cincinnati, Ohio by Ordinance No. Ord. 1968-117 adopted April 10, 1968, did assign all its right, title, and interest in twenty-three (23) metropolitan sewage disposal contracts to the Board of County Commissioners of Hamilton County, Ohio and the said Board of County Commissioners did, on April 10, 1968 adopt a resolution in which it accepted the assignment of the said twenty-three (23) metropolitan sewage disposal contracts; and

WHEREAS, the Board of County Commissioners of Hamilton County did, on April 10, 1968 adopt a resolution changing the official name of Hamilton County Sewer District No. 1 to "THE METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI"; and

WHEREAS, the County, in accordance with Section 133.06, Ohio Revised Code, has issued three (3) issues of Sewer Revenue Bonds in the principal amount of \$1,430,000 for the purpose of constructing county sewage treatment plants, and the City has issued bonds for sewer purposes, in an amount outstanding as of January 1, 1968 of \$22,360,000, all of which issues of bonds shall be subject to the provisions of this agreement and all of the debt service for which bonds are proposed to be paid from the revenues of the sewer system; and

WHEREAS, it is deemed to be in the interest of the City and the County for the Board of County Commissioners to enter into an agreement with the City of Cincinnati wherein the City of Cincinnati would agree to provide a total and complete management service for the operation of the county sewer system; and

WHEREAS, Section 307.15 et seq authorizes the Board of County Commissioners to contract with the City and the City to contract with the Board of County Commissioners to provide such services;

NOW THEREFORE, BE IT AGREED:

SECTION I - DEFINITIONS

1. The term "sewer district" shall mean The Metropolitan Sewer District of Greater Cincinnati.
2. "County" shall mean the County of Hamilton, Ohio.
3. "Commissioners" shall mean the Board of County Commissioners of Hamilton County, Ohio.
4. "City" shall mean the City of Cincinnati, Ohio.
5. "Council" shall mean the Council of the City of Cincinnati.
6. "Sewer System" shall mean all sanitary and combined sewers, sewer improvements and extensions, pumping stations, sewage treatment plants and facilities of the County, including those sewers and sewage treatment plants of the City, the sole and exclusive use of which has been granted and conveyed to the County, to be operated, maintained, extended and improved in the sewer district.
7. "Department" shall mean the Department of Sewers of the City of Cincinnati specifically created for the administration of this agreement.
8. "Revenues" shall mean all monies obtained or derived from the Sewerage Service Charge, Sewerage Surcharge, tap charge, permits, pumping charge, package plants, license fees and such other charges as may be levied.

SECTION II - PURPOSE OF AGREEMENT

1. The purpose of this Agreement is to set forth the terms and conditions under which the City will undertake the management and operation of the district for and on behalf of the Commissioners. In entering into this Agreement, it is the intent of the Commissioners to constitute the City as the sole management agency for the operation and maintenance of the sewer system, subject to the exclusive control and direction of the Commissioners as provided herein.

SECTION III - TERM OF AGREEMENT

1. This Agreement shall be in full force and effect for a fifty (50) year period beginning May 1, 1988, and thereafter extended for additional periods of time as are mutually agreed upon by the County and the City. During the term of this Agreement, the City will be the sole management and operating agency for the sewer system of the district.

SECTION IV - AUTHORITY OF THE COUNTY COMMISSIONERS

1. As provided by Sections 6117.01 and 133.06, ORC, authority and control of the sewer system of the sewer district shall remain vested in the Commissioners including, but not limited to, the major responsibilities of fixing sewerage service charges, adopting Rules and Regulations and approving capital improvement programs, and undertaking the necessary legislation therefor.

SECTION V - IMPLEMENTATION OF COMMISSIONERS' AUTHORITY**1. Establishment of Sewerage Service Charges**

- a. The Commissioners agree that, as of May 1, 1968, they will establish a schedule of uniform sewerage service charges for all users of the sewer system in the sewer district which shall be the same in every respect as the sewerage service charges currently in effect within the City of Cincinnati.
- b. After reviewing the operation of the sewer system and the schedule of service charges, and on or before November 15, 1968, and at such subsequent time as it deems necessary, the City shall submit to the Commissioners a proposed revised schedule of sewerage service charges, if necessary, to be charged all users of the sewer system. The Commissioners shall, after a public hearing thereon, adopt, or modify and adopt, the schedule of sewerage service charges which shall be applicable on all users of the sewer system and shall be effective January 1, 1969. The schedule of sewerage service charges may be amended from time to time by the Commissioners, or by the Commissioners upon recommendation of the City, after public hearing.
- c. The sewerage service charges and revenues from the sewer system shall at all times be at least sufficient to pay all reasonable expenses of operation and maintenance of the sewer system, the debt service charges of all sewer bonds of the County and City presently outstanding or to be hereafter issued payable from sewer revenues, and to provide an adequate reserve required for the payment of such bonds and for replacements, improvements and other necessary requirements of the sewer system.

2. Adoption of Rules and Regulations

- a. On or before October 1, 1968, the City shall prepare and submit to the Commissioners a proposed set of revised Rules and Regulations for the operation of the district, as provided by Section 6117.01 of the Ohio Revised Code.
- b. The Commissioners shall hold a public hearing thereon and shall adopt, or modify and adopt, a set of revised Rules and Regulations for the operation of the district which shall become effective no later than January 1, 1969. Rules and Regulations may be amended from time to time by the Commissioners, or by the Commissioners upon recommendation of the City, after public hearing.

3. Capital Improvement Programs

- a. On or before April 1 of each year, the City shall prepare and submit to the Commissioners a capital improvement program of sewer construction projects for the five-year period beginning July 1st of the year next ensuing. The capital improvement program shall contain all projects to be constructed, by descriptive title, estimated cost and method of financing, and year proposed for construction, except projects for local or lateral sewers which may be initiated by petition or otherwise and paid in full from the levy and collection of special assessments against benefited property.
- b. The Commissioners shall hold a public hearing on the capital improvement program as submitted and, no later than June 1st, shall adopt, or modify and adopt, the capital improvement program for the sewer system.
- c. The list of projects programmed for the first year of the five-year program, upon adoption, shall be controlling as to capital improvement expenditures during the ensuing year, beginning July 1st.

- d. The procedure for submission and adoption of a capital improvement program shall be repeated annually, on or before the dates prescribed above.

SECTION VI - FACILITIES, EQUIPMENT, AND PROPERTY

1. The Commissioners hereby agree to transfer absolute title to the City for all office furniture, office equipment, surveying equipment, construction equipment, sewer maintenance equipment, and Sanitary Engineering Department vehicles needed by the City for the management of the sewer system. In the event of termination of this Agreement, title to the furniture and equipment herein conveyed to the City shall remain with the City.

SECTION VII - TRANSFER OF PERSONNEL

1. The City agrees it may accept and employ all personnel who will be made available by the County's Sanitary Engineering Department. The City agrees that personnel transferred will be placed in the City's classification and pay plan at levels which approximately correspond to their present classification, salary, and skills.
2. The City agrees that earned vacation and earned sick leave, as of May 1, 1968, will be transferrable with the employee.
3. The City agrees that County personnel transferring to City status will have the option of continuing in the Public Employees' Retirement System of the State, or joining the Cincinnati Retirement System upon payment by the employee of all prior service liability as determined by the Board of Trustees of the City Retirement System.
4. The County agrees that, after transfer to City employment, employees will be completely subject to the City's personnel Rules and Regulations and all prior commitments shall be null and void.

SECTION VIII - AUTHORITY AND RESPONSIBILITY OF THE CITY

Subject to the authority vested in the Board of County Commissioners of Hamilton County, Ohio by the provisions of Section 6117.01 to 6117.04, inclusive, Ohio Revised Code, and Section 133.06, Ohio Revised Code, the City agrees to do all things necessary to manage and operate The Metropolitan Sewer District of Greater Cincinnati in an efficient and businesslike manner, including but not necessarily limited to, the following functions:

1. Plan, design, contract for, and supervise the construction of all sewers in the scope of this Agreement, sewage pumping stations, and sewage treatment facilities within Hamilton County, including special assessment improvements, but not for those facilities for which the various municipalities in the County have the legal authority to design and construct.
2. Draft all necessary legislation, compute tentative and final revised special assessments, where necessary, for the aforementioned sewerage facilities and submit same to the Commissioners for consideration and approval and/or passage.
3. Recommend the method or methods of financing the aforementioned sewerage facilities.
4. Maintain and operate all sanitary and combined sewers, sewage pumping stations and sewage treatment facilities as are now, or may become a part of the sewer systems, except as herein-after noted under Section XII of this Agreement.
5. Review and approve the design and construction of all sanitary sewers, sewage pumping stations and sewage treatment facilities connected either directly or indirectly into the sewerage facilities of the sewer district. The review and approval of storm drainage facilities and water line improvements are specifically excepted from this Agreement.

6. Issue tap permits for all connections to all sanitary or combined sewers, whether made directly or indirectly into sewers or sewerage facilities operated in the sewer district.
7. Prepare and maintain all sewer records and record drawings.
8. Bill and collect sewerage service charges and surcharges, and other approved charges, permit fees, license fees, as may be necessary, except for special assessments.
9. Establish and maintain a cost accounting system for the sewer system and furnish to the Commissioners, appropriate governmental agencies, and Trustees for County revenue bonds such financial statements as are required.
10. Receive and account for all monies which are a proper function of the sewer system.
11. Advertise, purchase, let contracts, and make payments for all equipment, materials and services necessary for the management of the sewer system in the manner required by law.
12. Maintain all property utilized for sewer facilities of the sewer system.
13. Obtain all easements required for the purposes of the sewer system.

SECTION IX - TRANSFER OF FUNDS AND DEBTS

1. As of the effective date of this Agreement, the City agrees that it will provide for and maintain, under appropriate designation, the necessary accounts required by the resolutions and trust agreements of the County securing the three (3) issues of Sewer System Revenue Bonds of the County authorized by Section 133.06 of the Ohio Revised Code. County funds on hand in these accounts as of May 1, 1968, shall become subject to the management of the City and shall be transferred by the County to the City for deposit in the new City accounts. The City agrees that it will transfer to these accounts appropriate City funds presently designated for these purposes in the City Sewerage Service Fund, Account 31-00-00-00 and the Capital Improvement Fund, Account 8810-00-00.
2. All gross revenues of the sewer system shall be deposited in the Sewer System Revenue Fund to be maintained by the City, separate and apart from all other City funds, and disbursements and transfers from that fund by the City shall be made in accordance with the provisions of the resolutions and trust agreements of the County referred to herein. Funds in the Sewer System Revenue Fund shall be expended by the City subject to the same conditions as would govern the Commissioners.
3. Any revenue bonds issued or to be issued by the Commissioners under the provisions of Section 133.06, ORC, shall have a first lien on said revenues after the payment of reasonable cost and expense of operation and maintenance of the sewer system, including all expenses of the Department. The debt service requirement of all City sewerage system general obligation bonds issued for sewer purposes covered by the provisions of this Agreement, outstanding January 1, 1968 in the principal amount of \$22,360,000 and of any additional general obligation sewer bonds payable from sewer revenues hereafter issued by the County shall be first paid from surplus sewer revenues.
4. In order to further secure the payment of said outstanding general obligation sewer revenue bonds of the City from surplus sewer revenues, the County agrees that all future improvements and extensions of the sewer system shall be paid from the proceeds of general obligation bonds and certificates of indebtedness of the County with principal and interest requirements thereof payable primarily from special assessments or surplus sewer revenues, unless the City recommends that the County undertake some other method of financing.

5. The County agrees that it will, immediately upon receipt, pay to the City the proceeds of any and all future bond issues for sewer district purposes,
6. It is clearly understood and agreed by the County and the City that nothing in this Agreement shall be construed to conflict with the obligations of the County to The Fifth-Third Union Trust Co. of Cincinnati, Ohio under the Trust Agreements securing the outstanding issues of County Sewer System Revenue Bonds.
7. The City agrees that it will pay from surplus revenues the deficit in the County's Sanitary Sewer Rotary Fund No. 85 as it exists on May 1, 1968 insofar as the balance in that fund is chargeable to sanitary sewer purposes.
8. At its discretion, the Commissioners may employ an independent accounting firm for an audit of the accounts of the district and the cost of said audit shall be paid by the City from the revenues of the sewer system.

SECTION X - PAYMENTS BY COUNTY TO CITY

1. It is understood and agreed that no payment by the County to the City is contemplated for services rendered pursuant to this Agreement, and none is provided for.

SECTION XI - EXPANSION OF THE SEWER DISTRICT

1. It is understood and agreed that the District, as defined at the time of adoption of this Agreement, may be expanded to include either additional municipalities within the County or additional areas beyond the limits of the County. Expansion of the District by inclusion of additional municipalities within the County shall be undertaken by the Commissioners upon recommendation of the City, after receipt of a municipal ordinance from the applicant municipality requesting and consenting to be included in the sewer district.
2. Expansion and/or sewerage service of the sewer system beyond the limits of the County shall be undertaken only upon mutual agreement of the City and the County, and upon such conditions and terms as may be mutually acceptable at the time of the expansion.

SECTION XII - SEWERS

1. Specifically excluded from the scope of this Agreement is the authority and responsibility for design, construction, maintenance, repair and replacement of storm sewer facilities and storm water channelization where those facilities are intended solely for the purpose of storm water drainage, except as in Item 3 of Section XII.
2. Specifically excluded from the scope of this Agreement are the design, construction, maintenance, repair and replacement of basins, inlet structures, inlet connections, and other appurtenances used for the purpose of conveying storm waters to combined sewers. These facilities shall be maintained by the appropriate highway departments of the State, County, municipalities, and townships.
3. Specifically included in the scope of this Agreement is the authority and responsibility for design, construction, maintenance, repair, and replacement of all sanitary sewers, including those sewers carrying a combination of storm and sanitary flows; except that where the State or other governmental agency having authority orders the separation of the combined flow, both replacement conduits would be included within the scope of this Agreement. Subsequent maintenance of the resulting storm sewers shall not be included within the scope of this Agreement.

SECTION XIII - AMENDMENTS

1. This Agreement may be amended as may be mutually agreed upon by the County and the City.

SECTION XIV - INTERPRETATION

1. Nothing contained in this Agreement is intended or meant to be interpreted or construed as violating any covenant, trust, term, condition or responsibility of the Commissioners or the City under any agreement or provision of law relating to or governing in any way their respective sewer and sewage treatment facilities made subject of this Agreement or of the ordinances and resolutions of the Commissioners or Council. In the event and to the extent that any provision of this Agreement is determined to be beyond the power and authority of the parties hereto to effect, the City and the County agree to seek modifications of this Agreement which will accomplish its general purpose; namely, to provide for better and more efficient sewer service in Hamilton County through more effective management of the operation, maintenance, and development of all sewerage and sewage disposal facilities of the County.

SECTION XV - EXECUTION

1. By the execution of this Agreement, the Commissioners hereby designate and appoint the City as the sole and complete management agent for the county sewer system and the City hereby accepts and undertakes to perform its duties and responsibilities and functions as such agent, all in accordance with the terms, conditions, and provisions relating thereto as defined and prescribed herein.

IN WITNESS WHEREOF, the City of Cincinnati, Ohio, a municipal corporation, by its City Manager, duly authorized by Ordinance of the Council of the City of Cincinnati, Ohio, and the Board of County Commissioners of Hamilton County, Ohio, by its County Administrator, duly authorized by Resolution of the Board of County Commissioners of Hamilton County, Ohio have hereunto set their hands the day and year first above mentioned.

THE CITY OF CINCINNATI, OHIO,
A Municipal Corporation

By [Signature]
City Manager

THE BOARD OF COUNTY COMMISSIONERS
HAMILTON COUNTY, OHIO

By [Signature]
County Administrator

Approved as to Form:

[Signature]
Cincinnati City Solicitor

[Signature]
Hamilton County Prosecuting Attorney